

MEMORANDUM

DATE: June 9, 2010
TO: The Chesapeake Bay Board
FROM: Michael D. Woolson, Senior Watershed Planner
SUBJECT: CBV-10-007 – Mr. and Mrs. Joseph J. Wysocki, 113 Ridge Crossing

Mr. and Mrs. Joseph Wysocki, residing at 113 Ridge Crossing, Ford's Colony, have filed an appeal of the Chesapeake Bay Preservation Ordinance Notice of Violation requirements, dated April 30, 2010. The Notice of Violation required the execution of a Chesapeake Bay Restoration Agreement, the restoration of the RPA with native plantings, and removal of a patio. Staff estimates the RPA impact from vegetation removal at approximately 3,900 sf and the RPA impact for the patio and associated pathways at approximately 1,200 sf.

On April 23, 2010 Staff became aware of the unauthorized clearing following a site inspection in the vicinity. Staff initiated an investigation and as a result has documented a violation of the County's Chesapeake Bay Preservation Ordinance. Staff has met with the Owners and contractor regarding this issue after issuing a Notice of Violation on April 30, 2010 requiring the removal of the patio and restoration of the RPA.

Historical Background Information

On October 3, 2003 an Application for Building Permit was submitted for the building of a new single family residence. The Chesapeake Bay Preservation Ordinance was under revision at this time and this application was processed under the existing ordinance requirements, which did not designate the lake as an RPA feature. This designation was changed after the revised Ordinance was adopted by the BOS (effective date of January 1, 2004). Notices were sent out to all property owners affected by the change in the Ordinance on January 4, 2007.

There have been 13 RPA exceptions (administrative and Bay Board) granted around this particular lake. Five of these were for the construction of the primary residence, four were for other accessory structures (gazebo, decks, and patios), and the remaining were for buffer modifications.

The property has been sold twice since the residence was built: September 26, 2007 and December 21, 2009.

The buffer adjacent to the lake has been previously modified by other property owners.

The Wysocki's had a plan developed on February 16, 2010 by William's Landscape & Design, Inc. This plan showed the replanting of the area adjacent to the lake and the proposed patio. A copy of this plan was given to staff after violation proceedings were initiated. The plan has extensive wetland vegetation proposed. Existing vegetation is a combination of weeds, shrubs, and turf grasses. Board members have communicated to staff their general resistance to processing after-the-fact permits.

Staff Guidance and Recommendations

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration.

1. Mr. and Mrs. Wysocki are the current property owners. In a statement submitted to the Board, they offer the following information in support of the appeal:
 - a. They had no prior knowledge that a Chesapeake Bay Preservation Area was designated on the property.
 - b. They had approval of their plan from the Ford's Colony Environmental Control Committee.
 - c. That no disclosure was provided during the residential sale of the property.
2. The Chesapeake Bay Preservation Ordinance Sections 23-7 and 23-10 require that authorization and a plan of development be reviewed and approved by the County prior to activities within RPA's.
3. The Wysocki's are not challenging the following facts in this case:
 - a. No plan of development or RPA buffer modification plan was submitted to the County for review and approval as is required by the Ordinance.
 - b. No authorization for the clearing and removal of native vegetation from within the RPA was requested from the County by either the Owners or the Contractor.
 - c. That a violation of the County's Chesapeake Bay Ordinance resulted from the above referenced activities that occurred on the property.
4. Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance.

The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity; and
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

Staff's guidance to the Board on deciding this matter is as follows:

1. The hardship is shared by other properties immediately adjacent to the appellant's property as well as numerous other properties within Ford's Colony that have RPA components located on them.
2. The granting of the appeal in this case may not adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity, once the proposed planting plan is implemented or possibly expanded upon. As there is no natural RPA buffer remaining on the lot, even before this work was started, granting relief to the appellant in this particular case will not adversely affect the water quality in the tributaries to the Chesapeake Bay.
3. The appellant's contractor in fact caused the hardship through an unauthorized activity thereby the hardship is self imposed.

Should this Board find in favor of staff, the Board should deny the appeal and allow the Chesapeake Bay Restoration Agreement process to proceed.

Should the Board find in favor of the appellant, the Board should require that a patio application come before them at the next regularly scheduled Chesapeake Bay Board meeting for review and discussion.